IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 79 of 2000()

CRA.105/1993 of SESSIONS COURT, MANJERI
CC.9/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PERINTHALMANNA

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REVN. PETITIONER:

PANAKKATHOTTATHIL RAMAYYAN CHETTIYAR,
S/O.KARUPPAN CHETTIYAR,
THERIKARA AMSOM, DESOM
PERINTHALMANNA, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR
SRI.JIJO PAUL

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31

2. THE SUB INSPECTOR OF POLICE,
PERINTHALMANNA POLICE STATION,
MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.351/2000 IN CRL.R.P.NO.79/2000

CLOSED

SD/- K.R.UDAYABHANU, JUDGE

11/09/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

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Crl.R.P.No.79 of 2000

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Dated this the 11th day of September, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 420 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/- and in default to undergo rigorous imprisonment for six months. Out of the fine amount Rs.2000/- was ordered to be paid to PW.1 as compensation.

2. The prosecution case is that the accused, the father and son (A2-son was acquitted by the trial court) and two others had executed a sale deed with respect to 4.20 acres of land, that is, Ext.P3, in favour of PW.1 and his children on 24/10/1983 and at that time, there was a subsisting loan from the Co-operative Land Mortgage Bank, Perinthalmanna, on the property assigned. The registered assignment deed and the registered release deed which were the prior title deeds with respect to the property were deposited in the Co-operative Land Mortgage Bank and there was an agreement that the purchaser should repay the balance amount due to the bank and, thereafter, the vendor would get the prior title deeds and hand them over to the

purchaser. According to the complainant, he had repaid the balance loan amount and redeemed the property of the charge and that he had been asking the vendor to hand over the same. The above request was evaded. The title deeds were taken back by the vendor on 03/02/1992 but the same was not handed over to the complainant and instead he filed O.S.No.55/1992 against the complainant for recovery of the possession on the strength of title and consequential injunction making false allegations that he forcibly entered the property on May 1991. The above suit was withdrawn with costs to be paid to the complainant.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 8, Exts.P1 to P6. Defence got marked Exts.D1 and D2.

4. The case of the revision petitioner is that in Ext.P3, assignment deed itself it is mentioned that a sum of Rs.2,200/- out of the sale consideration will be retained by the complainant, assignee, and he will remit the above amount which represented the outstanding sum due towards the loan due to the land mortgaging bank and settle the loan. According to the revision petitioner the above amount was not remitted by the assignee after the execution of the assignment deed,

that is, Ext.P3. There is specific recital in Ext.P3 in this regard. It can be seen from Ext.P3 that 4.20 acres of land was sold to the complainant for a total consideration of Rs.20,000/- and that Rs.7800/- was received as advance and Rs.10000/- was paid at the time of registration and Rs.2200/- was retained with the assignee for remitting in the land mortgage bank for clearing the encumbrance. PW.1 the complainant has stated that he remitted the amount. He has not produced any documentary evidence to prove the same. PWs.4 and 5, the officials of the bank has also stated that they cannot recollect as to who repaid the amount. It has to be noted that it is after 10 years that the civil suit and the consequent complaint has been filed. It is the case of the defence that the suit was filed as a sum of Rs.2200/- was still due from the complainant and that the first accused had to remit the above amount in the land mortgage bank and get the title deeds. It is pointed out that till the filing of the civil suit in 1992, no steps were taken by the complainant to get back the antecedent documents which he would have done had he remitted the amount in the land mortgage bank.

I find that the contention of the defence in this regard has got some merits. The same was not considered by the courts below. I

find that the accused is entitled for the benefit of doubt. The conviction and sentence entered into by the courts below is set aside. The accused/revision petitioner is acquitted. The criminal revision petition is allowed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.79 of 2000

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O R D E R

11th September, 2007